

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, October 26, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County, Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Ray Dwyer
Walter Schmidt

BOARD MEMBERS ABSENT: Walter Tarrmann

SECRETARY TO THE BOARD: Peggy S. Pelikan
Sheri Mount

OTHERS PRESENT: Town of Merton Board of Adjustment
Kent Johnson, BA05:077, petitioner
Jean Lucas, BA05:077, neighbor
Joe Voight, BA05:077, neighbor
Kathy Voight, BA05:077, neighbor
Pat McDonald, BA05:076, petitioner
Bob Biwer, BA05:079, petitioner
Lawrence Babb, BA05:080, petitioner
James Tessmer, BA05:080, owner
Peter Feichtmeier, BA05:079, neighbor
Mike Sabourin, BA05:081
Todd Whittaker, BA05:081, petitioner
Gene Eggert, BA05:078, petitioner
Paul Schneider, BA05:074, representing the petitioner
Albert Beck, none

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Bartholomew *I make a motion to approve the Summary of the Meeting of October 12, 2005.*

The motion was seconded by Mr. Schmidt and carried with four yes votes. Mr. Dwyer abstained as he was not in attendance for the October 12, 2005 meeting.

NEW BUSINESS:

BA05:076 PATRICK MCDONALD

Mr. Schmidt

I make a motion to approve the request in accordance with the staff's recommendation, as stated in the Staff Report, with the conditions recommended in the Staff Report.

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed porch enclosure must be located no closer to the shore and floodplain than the existing residence.
2. A Declaration of Restrictions shall be prepared by the Planning and Zoning Division staff, stating that the residence is located partially within the established road right-of-way and if, in the future, any portion of the residence should interfere with necessary road improvements, that portion of the residence must be removed at the owner's expense. Prior to the issuance of a Zoning Permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's office, and a copy furnished to the Planning and Zoning Division staff.
3. Prior to the issuance of a Zoning Permit, the Oconomowoc Town Board must approve the location of the residence partially within the established road right-of-way, and evidence of that approval must be submitted to the Planning and Zoning Division staff.
4. No decks or patios are proposed nor approved herein.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The approval of this request, as conditioned, will allow the petitioner to raise the residence, enclose the existing covered porch on the lower level and remodel the existing residence. This will allow the petitioner to better utilize the very small property and provide minimal living space. Although the residence will still not conform to the minimum floor area requirements of the Ordinance, the additional space in the basement level will provide the petitioners reasonable use of the property without increasing the footprint of the residence. The porch enclosure will be no closer to the shore and floodplain than the existing residence and will not have an adverse effect on the public interest and welfare. Keeping the nonconforming shed, while not desirable, will allow a very minimal amount of storage space on the property. Therefore, the approval of this request as conditioned, will be within the purpose and intent of the Ordinance.

BA05:077 W. KENT JOHNSON, JOHNSON DESIGN
Jennifer Meier—Owner

Mr. Bartholomew

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for denial of the request for variances from the shore and floodplain setback requirements for the 6 ft. wide stairways, and denial of the request for a variance from the floor area ratio requirements, but approval of the request for variances from the remodeling a non-conforming structure in excess of 50% of its fair market value requirements and special exceptions from the accessory building floor area ratio and offset requirements, with the following conditions:

1. The proposed additions to the residence must be located no closer to the lot lines than the existing residence (including any columns or posts), as measured to the outer edges of the walls (including any columns or posts), provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset/setback requirements. This will allow the residence to be expanded up and to the south but not toward either lot line or the shore.
2. The proposed additions, decks, and patio must meet the shore and floodplain setback requirements of the Ordinance. Only one (1) stairway, not to exceed 3 ft. in width, may be permitted within 75 ft. of the shore.
3. The total floor area ratio on the property shall not exceed 19.5%, this shall include the detached garage and any covered porches. The detached garage must be a minimum of 400 sq. ft. in size.
4. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
5. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed additions, detached garage, decks and patios, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
6. The detached garage must contain only one story and it must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft.
7. A detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. This is to ensure the construction of the proposed additions, patio, and detached garage does not result in adverse drainage onto adjacent

properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This plan must also address and resolve any current drainage problems on the property caused by the construction of the previous addition. This grading plan may be combined with the plat of survey required in Condition No. 5.

8. The property must be hooked up to municipal sewer or the Waukesha County Environmental Health Division must certify that the existing septic system is adequate for the proposed construction prior to the issuance of a Zoning Permit.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The petitioners would be permitted a total floor area of approximately 2,964 sq. ft. without the need for a variance from the floor area ratio requirements of the Ordinance which would allow the petitioner to use the property for a permitted purpose. In addition, the petitioners will be able to have access from the proposed patio with one 3 ft. wide stairway rather than two 6 ft. wide stairways. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

As long as the total floor area on the property does not exceed 19.5%, the staff is not opposed to the proposed detached garage slightly exceeding the maximum of 3% accessory building floor area ratio. The petitioners may decide whether they would prefer the slightly larger garage or the additional floor area on the residence; however, the detached garage must be a minimum of 400 sq. ft. in size. The approval of the variance from the offset requirements, as conditioned, will allow the construction of the additions as long as they are no closer to the west lot line than the existing residence, limiting the impact on the neighboring properties. The residence has already been extensively remodeled and conforms to all locational requirements of the Ordinance other than offset. Therefore, it is reasonable to grant a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value. Furthermore, as conditioned, the petitioner will be required to submit a detailed grading and drainage plan for the proposed construction that must also address and resolve any current drainage problems on the property. Therefore, the approval of this request, as conditioned, will be within the purpose and intent of the Ordinance.

BA05:079 ROBERT BIWER, JR.

John Garino—Owner

Mr. Schmidt

I make a motion to approve the request for a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance to allow the work that has been done to the boathouse and to allow the petitioners to complete the project as proposed.

The motion was seconded by Mr. Schultz. After some discussion Mr. Schmidt then amended his motion as follows:

Mr. Schmidt

I make a motion to approve the request for a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance to allow the work that has been done to the boathouse and to allow the petitioners to complete the project as proposed subject to the following conditions:

- 1. A firewall must be installed in the boathouse in compliance with all applicable building codes and ordinances.*
- 2. No other remodeling to the boathouse is permitted herein other than that presented to the Board.*

The reasons for the motion are as follows:

Given the history, the proposal meets the purpose and intent of the Ordinance. A hardship exists by virtue of the fact that the problem with the structure was not discovered until after permitted work was started. Requiring the boathouse to be removed with cause an undue hardship on the petitioner. Furthermore, both floors of the structure are usable.

The amended motion was seconded by Mr. Schultz and carried with three yes votes. Mr. Dwyer and Mr. Bartholomew voted no.

The staff's recommendation was for denial.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variance will not prevent the property from being used for the permitted purpose of single-family residential use and

therefore would not be unnecessarily burdensome. The petitioners have the opportunity to construct a large home and garage on this property (the permitted floor area ratio would allow approximately 6,300 sq. ft. of living and storage space on this property), which clearly provides for a reasonable use. Variances should only be granted to accommodate physical limitations on a property that prevent a reasonable use of the property and not the personal preferences or needs of the property owner. It is felt by the Waukesha County staff that, while the petitioners may desire a boathouse, it is certainly not necessary for a reasonable use of the property. Accessory structures such as boathouses, decks, patios, etc, are amenities to a property, but are not necessary for reasonable residential use of a property. Case law has repeatedly held that petitioners are not entitled to the "highest and best use" of a property, but only reasonable use. Further, any hardship that does exist at this point due to the condition of the boathouse is certainly self-created, as the petitioners have brought the need for a variance upon themselves by illegally undertaking work without permits. The purpose of the 50% provision in the Ordinance is to eliminate nonconforming structures and not to contribute to their permanence on the landscape. The request does not meet any of the legal standards for the granting of a variance and therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

It should be noted that denial of the requested variance results in additional violations of the Shoreland and Floodland Protection Ordinance and this matter would need to be pursued as a new violation from this point forward. Since it is no longer an option to utilize the structure "as is" (meaning before work exceeds 50% of its value) as the request is after-the-fact, the boathouse would have to be removed from the property.

BA05:080 LAWRENCE BABB

James Tessmer—Owner

Mr. Dwyer

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial of variances from the shore and floodplain setback requirements of the Ordinance for the balcony, but approval of variances from the shore and floodplain setback and from the remodeling a non-conforming structure in excess of 50% of its fair market value requirements.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The petitioners are currently using the property for a permitted use. Other than the balcony, the proposed addition will not be located closer to the shore and floodplain than the existing residence, which the 1999 Zoning Permit permitted in error. The building has remained for six years and the addition above it will not further encroach on the shore and floodplain if constructed as recommended. There is no justification to allow the balcony as proposed to extend any closer to the shore and floodplain. It should be noted that the first floor of the structure is 7 ft. above the floodplain as indicated on the new survey, which complies with the

provision of the Ordinance which may allow a principal residence to be 50 ft. from the floodplain if it is 3 ft. above it. The denial of the balcony does not meet the hardship test defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

Although the residence is non-conforming, there is no other location on the property where a new residence could be constructed in a more conforming location. Therefore, it is reasonable to allow the addition and allow the structure to be remodeled beyond 50% of its fair market value. Therefore, the approval of this request, as recommended, would be within the purpose and intent of the Ordinance.

BA05:078 GENE EGGERT

Mr. Bartholomew

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for denial if the request for variances from the sign size requirements of the Ordinance, but approval of the request for variances from the road setback, number of parking spaces and the parking offset requirements, with the following conditions:

1. The proposed sign must conform to all applicable Ordinance requirements.
2. Only the two (2) parking spaces located within the detached garage may be located closer than 10 ft. from the property lines.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The proposed sign can be reduced in size to conform to the Ordinance requirements and still serve its purpose. It should be noted that the petitioners could have a maximum of a 40 sq. ft. sign if they choose to make the sign non-illuminated. Due to the size of the property and the location of the septic system, the property does not have room to provide for adequate on-site parking. It should further be noted that the staff reviewed the possibility of a redesigned the parking area to allow for better ingress and egress around the building. However, due to the location of the septic system and the buildings on the property a better alternative was not found. As the petitioner has indicated, there is a public parking lot within walking distance from the subject property. The approval of this request, as conditioned, will be within the purpose and intent of the Ordinance.

BA05:081 TODD WHITTAKER

Mr. Schultz

I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for denial of the request for variances from the height, offset between an accessory building and a principal structure, remodeling a non-conforming structure in excess of 50% of its fair market value, and boathouse requirements as well as denial of the request for a special exception from accessory building floor area ratio, but approval of the request for variances from the road setback, shore and floodplain setback, offset, floor area ratio, minimum floor area, and open space requirements to allow the construction of a new single-family residence with attached garage and possible retaining walls on the subject property, with the following conditions:

1. A Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
2. The proposed residence must be located a minimum of 9 ft. from the side lot lines, 30 ft. from the shore, and 10 ft. from the road right-of-way, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform with the offset and setback requirements.
3. Any proposed decks or patios must also be a minimum of 30 ft. from the shore and 10 ft. from the road right-of-way.
4. The depth of the residence (between shore and road) shall not exceed 30 ft. and the footprint shall not exceed 950 sq. ft. in size. There must be an attached garage on the first floor of the residence that is a minimum of 400 sq. ft. in size.
5. Not including one basement level, the total square footage of the residence (including any area under decking and the attached garage) must not exceed 1,400 sq. ft. in size.
6. The residence shall adhere to the height requirements of the Ordinance and shall only be three (3) stories, including the basement level, as viewed from the lake.
7. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a zoning permit, a stake-out survey showing the location of the proposed residence, attached garage and decks, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
9. In order to ensure the construction of a new residence does not result in adverse drainage

onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 8.

10. Any proposed retaining walls that are deemed necessary for erosion control must be adequately screened as viewed from the lake. To ensure this, a detailed landscaping plan must be submitted to the Planning and Zoning Division Staff for review and approval prior to the issuance of any permits for the retaining walls.
11. No boathouse is permitted and the old foundation shall be removed.
12. Any walkways or stairways within 75 ft. of the lake shall not exceed 3 ft. in width.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The property is extremely non-conforming and although a boathouse foundation exists on the property, the construction of a boathouse would increase the total floor area on the property and decrease the already very limited amount of open space. No hardship exists to justify a boathouse on such a small lot. Even though the proposed residence will not exceed the maximum height allowed, it will be more than three stories when viewed from the lake. The petitioners will be able to use the property for a permitted purpose without the need for four (4) stories. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variances from the height, offset between an accessory building and a principal structure, remodeling a non-conforming structure in excess of 50% of its fair market value, and boathouse requirements of the Ordinance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

With a floor area that exceeds the total square footage of the property, the residence proposed on the subject property greatly exceeds what may be considered a reasonable use of the property. The granting of a variance from the offset requirements of the Ordinance to allow the residence to be 9 ft. from the lot lines rather than 10 ft. will allow a residence to be constructed that is 31.5 ft. wide, whereas otherwise the residence would have to be less than 30 ft. wide. As with the granting of an offset variance, the granting of variances from the shore and floodplain setback and road setback, as conditioned, will allow the residence to have a depth of 30 ft. If the revised house plan fills this envelope, the footprint of the residence would be approximately 945 sq. ft., excluding an attached garage, the residence will not meet the minimum first floor living area

requirement of 850 sq. ft. Due to the limitations of the lot it is reasonable to grant a variance from the minimum floor area requirement to allow for a small footprint. Furthermore, due to the size of the lot, no structure could be constructed on the property without the need for a variance from the open space requirements. The approval of the request, as conditioned, will allow the petitioner to use the property for a permitted use that will be in keeping with the surrounding properties. Therefore the approval of this request as conditioned, will be within the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA05:074 RUTH E. MUEHLMEIER FAMILY TRUST

Pamela Doucette (Petitioner)

Mr. Schmidt

I make a motion to deny the request to reconsider condition No. 2 of the Board's October 12, 2005, decision regarding this matter and reaffirm the decision made October 12, 2005.

The motion was seconded by Mr. Schultz and carried unanimously.

ADJOURNMENT:

Mr. Schmidt

I make a motion to adjourn this meeting at 10:35 p.m.

The motion was seconded by Mr. Dwyer and carried unanimously.

Respectfully submitted,

Peggy S. Pelikan
Secretary, Board of Adjustment